

**The Honorable Wally Herger and Earl Blumenauer**

**Statement for the Record**

**Subcommittees on Oversight and Select Revenue Measures of the House  
Committee on Ways and Means**

**Hearing on Harbor Maintenance Funding and Maritime Tax Issues**

**February 1, 2012**

Chairman Boustany, Chairman Tiberi, Ranking Member Lewis, and Ranking Member Neal,

Thank you for the opportunity to submit testimony to your subcommittees in support of legislation that would provide tax equity and allow U.S.-flag vessels that operate in both domestic and International trades to utilize the tonnage tax for international income.

On March 30, we introduced H.R. 1267, a bill to repeal the 30-day limit on domestic operations of U.S.-flag vessels that operate in both domestic and international trade. A companion bill, S. 57, was introduced by Senators Inouye, Begich and Cantwell.

**Summary**

Foreign registered vessels now carry 97 percent of the imports and exports moving in international trade with the United States. These foreign vessels are held to lower standards than U.S.-flagged vessels, and are virtually untaxed. Their operating costs are, therefore, lower than U.S.-flag vessel operating costs, which explains their 97 percent market share.

Six years ago, the American Jobs Creation Act of 2004 (P.L. 108-357) added a new Subchapter R to the Internal Revenue Code of 1986 that taxes a U.S.-flag vessel's income from international operations based on the tonnage of the vessel (tonnage tax), rather than the normal 35 percent U.S. corporate tax rate. The purpose of this lower tonnage tax is to help level the playing field for U.S.-flag vessels that compete in international trade against largely tax exempt foreign registered vessels.

A new concept (that was not included in either the House or Senate bill) was added in conference that is problematic. Specifically, a provision was adopted that prohibits a U.S.-flag vessel from using the tonnage tax on its international income if that vessel also operates in U.S. domestic trade for more than 30 days per year. The conferees reportedly added this 30-day limit on domestic trading in the mistaken belief that U.S.-flag vessels either operated in international trade, or in domestic trade, but not both. This is generally true, but not entirely. There are a small number of U.S.-flag vessels – approximately 63 vessels in all -- that operate in both domestic and international commerce. The 30-day limit has had the severely inequitable result of causing these American vessels to operate at a significant tax penalty relative both to foreign-flag and U.S.-flag competition in international trade.

In some cases, U.S. flag operators which engage in international trade have passed on available domestic carriage and tied their vessels up to avoid exceeding the 30-day threshold because exceeding the threshold by even one day would make all of the remaining foreign-generated income subject to the 35% U.S. corporate tax rate.

The solution is to repeal this 30-day limitation. This would enable U.S.-flag vessels to use the lower tonnage tax for income from international operations but still pay the normal 35% corporate tax on income from operations in the domestic commerce of the United States.

## **Background**

The Jones Act states that only vessels that are (1) built in American shipyards, (2) 75% owned by United States citizens, and (3) registered in the United States, are qualified to operate in U.S. domestic trade between American ports. It is important to recognize that these requirements already put these vessels at a significant cost disadvantage when they venture into international commerce. More specifically, foreign vessels are built in lower cost foreign shipyards, are virtually untaxed, and are manned by lower paid foreign citizen crews.

The statutory prohibition on American vessels that operate in domestic trade using the tonnage tax for their international service is a completely unjustifiable additional burden on these vessels. United States tax policy should facilitate the participation of American vessels in our international trade rather than further handicapping them and exacerbating America's 97 percent reliance on foreign vessels to carry its international commerce.

## **30-Day Limit Repealed in 2006 for Great Lakes Vessels Only**

The identifiable universe of "dual trade" U.S.-flag vessels that are adversely affected by the 30-day limit is approximately 63 vessels. In December 2006 Congress recognized the inequity caused by the 30-day limit and repealed it, but only for U.S.-flag vessels that operate in domestic and international trades on the Great Lakes. There are about 50 such vessels. They operate primarily in domestic trade between American ports on the Lakes, but also may periodically carry cargo between the United States and Canada in international trade. (See Section 415 of P.L. 109-432, the Tax Relief and Health Care Act of 2006.)

## **Conclusion**

There is no tax policy justification for making this correction to the tonnage tax only for U.S.-flag vessels that operate in one region of the country. The correction should apply equally to all U.S. ocean carriers, regardless of the geographic region of the United States where they operate. There are approximately 13 U.S.-flag vessels remaining that are still adversely affected by the 30-day limit. These vessels operate in domestic trades that involve the U.S. Pacific Coast, the U.S. Atlantic Coast, the Gulf of Mexico, Hawaii, and Alaska.

We respectfully request your assistance in enacting the provisions of H.R. 1267.